Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO. _____

In the
Supreme Court of the United States
October Term 1996

KAY BROWN, Petitioner

VS.

TOMMIE RAY SANFORD, INDIVIDUALLY
AND DBA TOMMIE RAY'S, Respondent

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Fifth Circuit

****

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

****

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ATTORNEYS FOR PETITIONER
KAY BROWN

38 pp

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U.S. COURT OF APPEALS
FILED
JUL. 05, 1996
CHARLES R. FULBRUGE III
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20223
Summary Calendar

In The Matter of: TOMMIE RAY SANFORD

Debtor.

KAY BROWN,

Appellant,

versus

TOMMIE RAY SANFORD, doing business as Tommy Ray's,

Appellee.

Appeal from the
United States District Court
for the Southern District of Texas
(CA-H-94-2452)

Before DAVIS, BARKSDALE and DeMOSS, Circuit Judges.

PER CURIAM:*

At issue in this appeal from a district court order affirming the bankruptcy court is whether the debtor's liability for a judgment imposed by a state trial court, in which he (Tommie Ray Sanford) was found liable pursuant to the Texas Dram Shop Act for injuries caused by an intoxicated patron of his bar, was dischargeable. The bankruptcy and district courts both held that debt to be dischargeable and not encompassed by 11 U.S.C. § 523(a)(6), which excepts from discharge those debts for willful and malicious injury by the debtor to another entity. We **AFFIRM.**

I.

On October 2, 1990, Kay Brown was seriously injured when her automobile was struck by another automobile. The other driver, Ed Reasoner, was intoxicated at the time of the accident; he had left "Tommy Ray's", a bar owned by Sanford, immediately prior to the accident, and had been drinking continuously at the bar for several hours.

Brown sued Sanford in state court; he failed to appear; and Brown was awarded judgment for $1.9 million against Sanford d/b/a Tommy Ray's. The judgment provided that Sanford was liable for selling alcoholic beverages to an obviously intoxicated person, in violation of Tex. Alco. Bev. Code Ann. P.O. Box 202 (The Texas Dram Shop Act); and that Reasoner's intoxication was the proximate cause of Brown's injuries.

---

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Sanford filed under Chapter 7 of the Bankruptcy Code in April 1993, and Brown filed her Complaint to Determine Nondischargeability that July, claiming that Sanford's conduct was "willful and malicious" and thus nondischargeable under 11 U.S.C. § 523(a)(6). The bankruptcy court found that Sanford did not personally serve drinks to Reasoner and held that, although liable to Brown under state law, the acts giving rise to that liability were at worst negligent, and accordingly were not encompassed by the willful and malicious standard required for nondischargeability. The district court affirmed.

II.

We review the district court's review of the bankruptcy court *de novo*, applying the same standard applied there. The bankruptcy court's findings of fact are reviewed only for clear error, *e.g.*, ***In re Missionary Baptist Foundation of America, Inc.***, 712 F.2d 206, 209 (5th Cir. 1983); questions of law and mixed questions of law and fact, *de novo*. *E.g.*, ***Frame v. S-H, Inc.***, 967 F.2d 194, 202 (5th Cir. 1990).

Brown urges that the bankruptcy court erred when it found that the debt owed by Sanford as a result of his liability under the Texas Dram Shop Act was dischargeable. For the reasons given by the district court in its thorough opinion, we find no error. We conclude that the court's factual finding that Sanford did not personally sell any drinks to Reasoner is not clearly erroneous, and agree with its holding that Sanford's actions, because he had no personal involvement, were not willful, but rather, at worst, negligent. Moreover, we agree with both lower courts that, regardless of Sanford's

liability under Texas state law for the injuries Brown received, for purposes of the Bankruptcy Code, Sanford's actions were not a "willful and malicious injury by the debtor". 11 U.S.C. § 523(a)(6).

III.

For the foregoing reasons, the judgment is

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
JAN. 25, 1996
MICHAEL N. MILBY, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
TOMMIE RAY SANFORD	§	BANKRUPTCY NO.
Debtor.	§	93-2973-H4-7
	§	
KAY BROWN,	§	
	§	
Appellant,	§	CIVIL ACTION NO.
	§	H-94-2452
vs.	§	
	§	ADV. PROCEEDING
TOMMIE RAY SANFORD,	§	NO. 93-4430
Individually and d/b/a	§	
TOMMIE RAY'S,	§	
	§	
Appellee.	§	

MEMORANDUM OPINION AND ORDER

The above referenced civil cause is an appeal from a final judgment of the bankruptcy court whereby the debtor's liabilities were discharged in favor of the appellee Tommie Ray Sanford ("Sanford"). After reviewing the records in this proceeding and considering the applicable law, the court is of the opinion that the bankruptcy court's judgment should be **AFFIRMED**.

1. Factual Background

The facts are not in dispute. On October 2, 1990, appellant Kay Brown ("Brown") was injured in an automobile accident. The driver of the car which struck Brown, Mr. Ed Reasoner, had earlier become intoxicated at Tommie Ray's, a bar owned by Sanford. During the time Mr. Reasoner was at Tommie Ray's drinking, Sanford was not present.

Brown filed an action against Sanford in state court alleging negligence based on Sanford's violation of Tex. Alco. Bev. Code Ann. § 2.02 (Vernon 1992), i.e., the Texas Dram Shop Act. In the state court trial, Brown non-suited all the defendants except Sanford. Sanford failed to appear at the state court trial and judgment was entered against him in the amount of $1,900,000. Sanford's liability was based upon the Dram Shop Act which provides that a seller or provider of alcoholic beverages is liable where he sells or provides alcohol to an already apparently intoxicated patron, and the patron causes damage proximately caused by the patron's intoxication.

On April 29, 1993, Sanford filed for protection under Chapter 7 of the Bankruptcy Code. Brown subsequently filed a petition claiming that Sanford's violation of the Dram Shop Act was not dischargeable in that it was "willful and malicious" under 11 U.S.C. § 523(a)(6). After a trial on the merits, United States Bankruptcy Judge William Greendyke determined that Sanford's acts that gave rise to his liability in the state court action were at best negligence, and accordingly did not fit within the "willful and malicious" standard required for nondischargeability. It is from this determination that Brown appeals.

Brown presents the following points of error:

(1) the bankruptcy court erred in granting judgment for Sanford by holding that Sanford's debt was dischargeable pursuant to 11 U.S.C. § 523(a)(6);

(2) the bankruptcy court erred in holding that Sanford's conduct in providing alcoholic beverages to Mr. Reasoner was not malicious and willful;

(3) the bankruptcy court erred in holding that Sanford's serving of alcoholic beverages to Mr. Reasoner did not except Sanford's debt from being discharged pursuant to 11 U.S.C. § 523(a)(6); and

(4) the bankruptcy court erred in holding that Sanford's conduct in violation the Dram Shop Act did not except Sanford's debt to Brown from discharge.

II. Analysis

A. Standard of Review

The appropriate standard of review for a bankruptcy appeal is abundantly clear based upon the bankruptcy rules and the relevant case law. The bankruptcy court's finding of facts must be clearly erroneous in order to justify reversal, unless such findings are premised on improper legal standards. Bankr. R. 8013; In re Missionary Baptist Found. of Am., Inc., 712 F.2d 206, 209 (5th Cir. 1983). A finding of fact is clearly erroneous "when although there is evidence to support it, the reviewing court on the entire evidence is left with a firm and definite conviction that a mistake has been committed. In re Missionary, 712 F.2d at 209 (quoting United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948).

B. Issue for Determination

Although appellant asserts four points of error, each point turns on the question of whether the bankruptcy court erred in determining that Sanford's violation of the Dram Shop Act was not willful and malicious and, therefore, dischargeable under section § 523(a)(6). The Fifth Circuit has defined "willful and malicious" under section § 523(a)(6) to mean "without just cause or excuse." Matter of Garner, 56 F.3d 677, 681 (5th Cir. 1995). "Willful means intentional and malicious adds the absence of just cause or excuse." Id.

In interpreting the Texas Dram Shop Act, the Texas Supreme Court has determined that the Dram Shop Act provides a cause of action for negligence. Smith v. Sewell, 858 S.W.2d 350, 355-56 (Tex. 1993). In discussing whether Sanford's violation of the Dram Shop Act was dischargeable under section § 523(a)(6), Judge Greendyke stated that:

> ...we end up with a valid state court judgment. We end up with a finding that we have no personal involvement by Mr. Sanford. Even if it was, it's negligence at best, and that doesn't suffice. We end up with — although we have liability under state law, that liability, because it's not directly derived from personal, active, affirmative behavior by Mr. Sanford, won't suffice for § 523(a)(6) purposes...

Transcript of Trial before Judge Greendyke (Instrument #32 in Adv. Proceeding No. 93-4438) at 52. In spite of Judge Greendyke's findings, Brown contends that Sanford's actions in not supervising his employees, not carrying liability insurance, and for intentionally serving alcoholic beverages to an obviously intoxicated person, who was in a position to

endanger himself or others shows Sanford's subjective intent and implied malice to injure Brown. Instrument #4 at 15-16.

Exceptions to the dischargeability of debts under the Bankruptcy Code are narrowly construed and the burden of proving nondischargeability of a debt rests on the creditor seeking to prevent discharge. In re Foreman, 906 F.2d 123 (5th Cir. 1990). It is well settled that negligence, or even recklessness or gross negligence, does not establish a willful injury for nondischargeability under section § 523(a)(6). In re Ikner, 883 F.2d 986, 990 (11th Cir. 1989); In re Chavez, 140 B.R. 413, 421 (Bankr. W.D. Tex. 1992). A willful injury under section § 523(a)(6) requires an action that the debtor intended for the purpose of causing injury or that the debtor knew was substantially certain to result in injury. In re Taneff, 1996 WL 8289, *7 (W.D.N.Y. Jan. 3, 1996) (citing In re Walker, 48 F.3d 1161, 1165 (11th Cir. 1995). "The Bankruptcy Code requires at least a deliberate action that is substantially certain to produce harm." In re Taneff, 1996 WL at *7 (quoting In re Conte, 33 F.3d 303, 309 (3d Cir. 1994).

After reviewing the record developed before the bankruptcy court, it does not appear that Judge Greendyke's findings were clearly erroneous. The Court finds that the bankruptcy court did not err in determining that Sanford's acts were not willful and malicious. Therefore, the bankruptcy court's judgment should be affirmed.

III. Conclusion

In accordance with the foregoing, the Court hereby

ORDERS that Brown's points of error are **OVERRULED; and**

ORDERS that the ruling of the bankruptcy court is **AFFIRMED**, and further

ORDERS that this case is **DISMISSED.**

THIS IS FINAL JUDGMENT.

SIGNED at Houston, Texas, this 24th day of January, 1996.

/s/ Melinda Harmon
MELINDA HARMON
UNITED STATES DISTRICT JUDGE

IN THEUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED
JUNE 15, 1994
MICHAEL N. MILBY, CLERK

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE	CASE NO. 93-42973-H4-7
TOMMIE RAY SANFORD	CHAPTER 7
DEBTOR	
KAY BROWN Plaintiff	ADVERSARY NO. 93-4438
VS.	
TOMMIE RAY SANFORD Defendant	

JUDGMENT

CAME ON FOR trial, the COMPLAINT OBJECTING TO DISCHARGEABILITY OF DEBT, filed by KAY BROWN pursuant to 11 U.S.C. § 523(a)(6) against the Defendant, TOMMIE RAY SANFORD. Plaintiff and Defendant appeared in person and by counsel. The Court has jurisdiction of this matter and all parties entitled to notice have been properly notified pursuant to the requirements of the U.S. Bankruptcy Code, Federal Bankruptcy Rules, and the local rules of the Bankruptcy Court for the Southern District of Texas. The Court, having reviewed the record of this proceeding and considering the evidence and argument of counsel, read findings and conclusions into the record in open court, therefore (/s/ WG), it is

ORDERED, ADJUDGED, and DECREED that the debt of TOMMIE RAY SANFORD to KAY BROWN is hereby determined to be dischargeable. An Order of Discharge shall be entered in due course in case #93-42973-H4-7, styled, In re Tommie Ray Sanford. It is further

ORDERED, ADJUDGED, and DECREED that judgment is hereby entered against the Plaintiff and for the Defendant, denying all other relief sought in the Complaint.

SIGNED this date: 6/12/94

/s/ William Greendyke
U.S. BANKRUPTCY JUDGE

APPROVED AS TO FORM:

/s/ Don J. Knabeschuh
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KAY BROWN	§	CASE NO. 93-4438-H4-
	§	ADV
VERSUS	§	
	§	HOUSTON, TEXAS
TOMMIE LEE	§	April 29, 1994
SANFORD	§	10:26 TO 11:44 O'CLOCK
DEBTOR	§	A.M.

TRIAL

BEFORE THE HON. WILLIAM GREENDYKE, UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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Court Recorder: Brent Laswell

PREPARED BY:
JUDICIAL TRANSCRIBERS OF TEXAS, INC.
7035 West Tidwell
Building J, Suite 109
Houston, Texas 77092
(713) 462-6463

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

THE COURT: I don't read that every day. I'm looking at 2.01. It defines, the term "provider" means a person who sells or serves an alcoholic beverage under authority of a license or permit issued under the terms of the Code or who otherwise sells an alcoholic beverage to an individual.

The cause of action is 2.02. States, this chapter does not affect the right of any person to bring a common law cause of action against any individual whose consumption of an alcoholic beverage allegedly resulted in causing the person bringing the suit to suffer personal injury or property damage.

It provides a cause of action for providing, selling, or serving an alcoholic beverage, stating that it may be made the basis of a statutory cause of action under this chapter and may be made the basis of an administrative revocation proceeding under the Code upon proof that (1) at the time the provision of the beverage occurred it was apparent to the provider that the intoxicated — that the individual — I'm sorry — being sold, served, or provided with an alcoholic beverage was obviously intoxicated to the extent that he presented a clear danger to himself and others.

And secondly, that the intoxication of the recipient of the alcoholic beverage was a proximate cause of the damages suffered.

That's the basis for the liability.

Even though there is a state court judgment, I think I'm required to look behind the facts, look behind the judgment to the facts of the case to determine whether or not there is liability, if you will, under § 523(a)(6) of the Bankruptcy Code.

There's several ways in which debts become non-dischargeable. Some of them operate by operation of law, like taxes, alimony, child support don't get discharged in bankruptcy. Other ones, like § 523(2)(4)(6), and this is (6), have to be made the subject of a lawsuit, like the one that Ms. Eisen has brought here in court. And I have to make findings that the Debtor should not be discharged not by operation of law but because of the way the facts were in connection with the lawsuit.

That's why we're having this, and because of that obligation, I don't get to just take at face value that state court lawsuit in this instance and say you won in state court so you win here, and it's non-dischargeable. I have to look at what happened, particularly if there's some kind of ambiguity about what happened.

From, I guess, a rhetorical standpoint, I don't think collateral estoppel will attach because I don't think personally that the matters in dispute down there were actually litigated. That's neither here nor there, because I'm looking behind it anyhow to take a good and see what happened.

I'm going to be real specific about facts of what happened, and I'm going to make rulings with regard to the law, Ms. Eisen, because I think this is a significant case. I don't think this has happened, and I don't generally invite people to appeal, but I'm telling you, you're sure not going to offend me if you appeal, because you need to pursue it or forever be quiet about what's going on.

The evidence indicates that Mr. Reasoner went to the bar on October 2nd of 1990. While his testimony itself might not altogether always be credible particularly because of his ostensibly admitted state, the testimony of Mr. Thomason, the HLP lineman was pretty clear. And it all fits together. I've got too many people telling me the same story.

And the story is that Reasoner went to the bar with the ambition to get drunk, and he accomplished that.

Now, whether or not Ms. Rose sold him a drink or not or ordered that he not be given drinks the finding I make is that he succeeded in his ambition. He either got served by a bartender or he got his friends to buy drinks for him, and he drank. But he left the bar, and he was drunk.

It's also clear that he caused grievous damage to Ms. Brown and her family, and that resulted in the state court judgment. It's also clear, and I find that Tommie Ray Sanford did not serve, personally, any drinks. He did not know personally Mr. Reasoner. That's the significant part. I think that's where the bankruptcy law comes in and says unless there is some personal intentional act on the part of the Debtor, then we don't have any nondischargeable debt.

My conclusion is that notwithstanding the state court statute providing for liability for the holder of the permit, that in the absence of some evidence that the holder of the permit was the one who actually did the wrong, that we have no nondischargeability.

I think the State Supreme Court, when they rendered their decision in the *Sewell* case, I think that's something I can rely upon. I recognize that dealt with the application of comparative negligence statutes against someone who'd been doing the drinking. And I don't think that should cause me to discount their rationale and their analysis of the dram shop liability statute.

That statute walks, talks, and quacks just like a negligence statute. It is a negligence cause of action. That's the second basis for saying that we don't have an intentional act. Even if we find Mr. Sanford or one of his employees was negligent, that's not going to suffice.

Number one, Mr. Sanford wasn't an actor. And at best he's negligent in perhaps not enforcing some policies that I believe he did enforce. And the second this is that I don't think that negligence of an employee perhaps not monitoring the situation or perhaps in serving someone who was intoxicated cannot be imputed to him to in some way bar the discharge of this particular obligation, this valid state law obligation.

So, we end up with a valid state court judgment. We end up with a finding that we have no personal involvement by Mr. Sanford. Even if there was, it's negligence at best, and that doesn't suffice. We end up with — although we have liability under state law, that liability, because it's not directly derived from personal, active, affirmative behavior by Mr. Sanford, won't suffice for § 523(a)(6) purposes on the basis of the cases that I cited to you that I don't recall off the top of my head.

We don't have, to my knowledge, a similar statute. I know that's not a conclusive statement, but I think that the fact patterns and the statutory patterns that those other courts address are similar enough to this and the reasoning behind those other bankruptcy court decisions are similar enough for me to say that this is the way it ought to happen because of that other authority.

If there are other findings or conclusions that you all want me to make, above and beyond what I've done for purposes of completeness of the record, so that a district judge can render, as opposed to remand, so that we don't have to retry it, I welcome those.

We don't have a whole lot to fight about, I don't think. I don't intend on changing any of the findings that I've made here. There may be come others that you might think are necessary. I think I've given you enough to pitch the deal, if

you want, to a district judge and have him or her make a call — an appellate call on the law. There's not a whole lot of facts in dispute. There's no doubt about what happened in my mind, and any retrial of the state court issue is really unnecessary, since we know the legal point — from a legal standpoint, Mr. Sanford wasn't there, and he didn't do it personally — serve anybody personally. I think that's really what it turns on.

Any questions?

MS. EISEN: No, Your Honor.

THE COURT: Mr. Knabeschuh, I want a form of judgment from you denying the relief requested, and I need any additional findings and conclusions presented to me at the time that order's given. Go ahead and have Ms. Eisen sign off on the order. It shouldn't be very complicated or sophisticated. Just so she knows when to ask for any additional findings or conclusions, and likewise with you.

MR. KNABESCHUH: Do you want the findings and conclusions -

THE COURT: No. I've done it. I've —

MR. KNABESCHUH: — incorporated into this?

THE COURT: No. No. I read it into the record. You don't need to recapitulate them. If you want more beyond what I've done, that's going to be the time to ask me to do it because that's — it's never going —

MR. KNABESCHUH: Just a judgment denying — or —

THE COURT: Yes.

MR. KNABESCHUH: — holding the debt dischargeable.

THE COURT: Yes. I have this motion and this order to seal. I will have the document sealed unless you all ask me to retrieve it, and it'll remain in the clerk's safe.

I'm going to give it to Ms. Bellville now so she can take it to be docketed, and then put it in the safe.

Anything else?

MR. KNABESCHUH: Nothing from me.

THE COURT: Thank you all for waiting this morning. I'm sorry to hold you up. We'll be in recess until 1:00 o'clock, I believe.

MS. EISEN: Oh. Your Honor, one point. Does the Court want the original videos or is a copy of the videotapes sufficient?

THE COURT: A copy's fine with me, but you all can agree to that —

MS. EISEN: Yes, sir.

THE COURT: — on how you want to handle it. I think it ought to stay here until you're done so the district court can look at it if it needs to.

(These proceedings adjourned at 11:44 a.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ J. Finigan
Signature of Transcriber

Signature of Proofreader

7/7/94

9469
JTT#

NO. 91-04576

KAY BROWN	§	IN THE DISTRICT
	§	COURT OF
VS.	§	HARRIS COUNTY,
	§	TEXAS
TOMMIE RAY SANFORD	§	295TH JUDICIAL
dba TOMMIE RAY'S	§	DISTRICT

FINAL JUDGMENT

Be it remembered that on the 1st day of April, 1993, came on for trial the above styled cause. Plaintiff, Kay Brown, appeared in person and through counsel and announced ready. Tommie Ray Sanford d/b/a Tommie Ray's, Defendant, failed to appear. Jury was waived. The Plaintiff, Kay Brown, voluntarily non-suited Defendant, Edward Reasoner. Plaintiff, Kay Brown, previously voluntarily non-suited Defendant, State Farm Insurance Co. Intervenor, Employers Health Insurance, Inc., non-suited its intervention. The Court proceeded to hear evidence, including evidence regarding the provision of alcohol by Defendant, Tommie Ray Sanford d/b/a Tommie Ray's to Edward Reasoner when Edward Reasoner was obviously intoxicated to the extent that Edward Reasoner presented a clear danger to himself and others and, including evidence that the intoxication of Edward Reasoner was a

proximate cause of the Plaintiff's damages, and evidence regarding the amount and type of Plaintiff's damages in the past and future and after receiving the evidence, all competent and sufficient, the Court rendered its verdict that Kay Brown have judgment against Tommie Ray Sanford d/b/a Tommie Ray's in the amount of ONE MILLION NINE HUNDRED THOUSAND AND NO 100 ($1,900,000.00) DOLLARS. It is therefore,

ORDERED, ADJUDGED AND DECREED, that Kay Brown should recover the sum of ONE MILLION NINE HUNDRED THOUSAND AND NO 100 ($1,900,000.00) DOLLARS against and from Tommie Ray Sanford d/b/a Tommie Ray's, Defendant, for which let execution issue. The Court further finds that in accordance with Art. 5069.1.05 and the laws of the State of Texas that Plaintiff Kay Brown is entitled and hereby ordered the recovery of prejudgment interest in the amount of FIVE HUNDRED ELEVEN THOUSAND ONE HUNDRED NINETY-ONE AND 20/100 ($511,191.20) DOLLARS for which let execution issue.

It is further ORDERED, ADJUDGED AND DECREED, that Plaintiff, Kay Brown, have and recover the total sum of

TWO MILLION FOUR HUNDRED ELEVEN THOUSAND ONE HUNDRED NINETY-ONE AND 20/100 ($2,411.191.20) DOLLARS, from Defendant, Tommie Ray Sanford d/b/a Tommie Ray's, for which let execution issue.

It is further ORDERED, ADJUDGED AND DECREED, that the post-petition judgment interest at the legal rate for judgment shall run on the entire judgment and for which let execution render hereon.

It is further ORDERED, ADJUDGED AND DECREED, that Plaintiff, Kay Brown, have and recover all cost of court from Defendant, Tommie Ray Sanford d/b/a Tommie Ray's, for which execution shall lie hereon.

It is further ORDERED, ADJUDGED AND DECREED, that Motion for Summary Judgment of Tommie Ray Sanford d/b/a Tommie Ray's is denied.

It is further ORDERED, ADJUDGED AND DECREED, that Kay Brown take nothing by way of her suit against Edward Reasoner.

It is further ORDERED, ADJUDGED AND DECREED, that Plaintiff, Kay Brown, take nothing by way of her suit against State Farm Insurance Co.

It is further ORDERED, ADJUDGED AND DECREED, that Employer Health Insurance, Inc. take nothing by way of its intervention.

It is further ORDERED, ADJUDGED AND DECREED, that any relief not herein expressly granted is denied.

It is further ORDERED, ADJUDGED AND DECREED, that Plaintiff have all writs and processes as may be necessary in the enforcement and collection of this judgment.

SIGNED THIS 2ND DAY OF APRIL, 1993.

/S/ Dan Downey
JUDGE PRESIDING

APPROVED AS TO FORM:

JAMISON & ASSOCIATES

BY: /S/ Bruce L. Jamison
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Houston, Texas 77002
(713) 222-2756
(713) 222-8534 (FAX)

SECTION § 523 (11 U.S.C. § 523)

§ 523. Exceptions to discharge.

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt

(1) for a tax or a customs duty -

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, if required

(i) was not filed; or

(ii) was filed after the date on which such return was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C) for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than $1,000 for "luxury goods or services" incurred by an individual debtor on or within 60 days before the order for relief under this title, or cash advances aggregating more than $1,000 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 60 days before the order for relief under this title, are presumed to be nondischargeable: "luxury goods or services" do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined

for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act;

(3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6)* of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

(4) for fraud and defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that

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* [Ed. Note: The Bankruptcy Reform Act of 1994, Pub. L. No. 103-394 (effective on October 22, 1994), added paragraph (15) to section 523(a) and amended section 523(c)(1) to include cross references to that paragraph. In conjunction with these amendments, Congress should have amended section 523(a)(3)(A) and (B) to include cross references to paragraph (15); this omission appears inadvertent.]

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

(8) for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or

nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless

(A) such loan, benefit, scholarship, or stipend overpayment first became due more than 7 years (exclusive of any applicable suspension of the repayment period) before the date of the filing of the petition; or

(B) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;

(9) for death or personal injury caused by the debtor's operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

(10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act; or [*sic*]

(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation while acting in a

fiduciary capacity committed with respect to any depository institution or insured credit union;

(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency; or [*sic*]

(13) for any payment of an order of restitution issued under title 18, United States Code;

(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

(15)* not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless

(A) the debtor does not have the ability to pay such debt from income or

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* [Ed. Note: Section 304 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394 (effective on October 22, 1994), amended section 523(a) by adding a new paragraph (15). Although Congress intended to add this new paragraph at the end of subsection (a), the language of section 304 of the 1994 Act states that it is to be added at the end of "section 523." The editors have placed paragraph (15) in its intended location in subsection (a), rather than at the end of section 523.]

property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor; [*or*] [*sic*]

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a dwelling unit that has condominium ownership or in a share of a cooperative housing corporation, but only if such fee or assessment is payable for a period during which

(A) the debtor physically occupied a dwelling unit in the condominium or cooperative project; or

(B) the debtor rented the dwelling unit to a tenant and received payments from the tenant for such period,

but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case.

(b) Notwithstanding subsection (a) of this section, a debt that was excepted from discharge under subsection

(a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or 17a(5) of the Bankruptcy Act, under section 439A of the Higher Education Act of 1965, or under section 733(g) of the Public Health Service Act in a prior case concerning the debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this title unless, by the terms of subsection (a) of this section, such debt is not dischargeable in the case under this title.

(c) (1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), (6), or (15) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), (6), or (15) as the case may be, of subsection (a) of this section.

(2) Paragraph (1) shall not apply in the case of a Federal depository institutions regulatory agency seeking, in its capacity as conservator, receiver, or liquidating agent for an insured depository institution, to recover a debt described in subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an institution-affiliated party unless the receiver, conservator, or liquidating agent was appointed in time to reasonably comply, or for a Federal depository institutions regulatory agency acting in its corporate capacity as a successor to such receiver, conservator, or liquidating agent to reasonably comply, with subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect to such debt.

(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall

grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of a [*sic*] insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

Bankruptcy Rule References: 2002, 4004 and 4007

CHAPTER 2. CIVIL LIABILITIES FOR SERVING BEVERAGES

Section

2.01. Definitions.
2.02. Causes of Action.

Cross References

Revocation or suspension of license or permit, see V.T.C.A., Alcoholic Beverage Code § 6.01.

§ 2.01. Definitions

In this chapter:

(1) "Provider" means a person who sells or serves an alcoholic beverage under authority of a license or permit issued under the terms of this code or who otherwise sells an alcoholic beverage to an individual.

(2) "Provision" includes, but is not limited to, the sale or service of an alcoholic beverage.

Added by Acts 1987, 7th Leg., ch. 303, § 3, eff. June 11, 1987.

§ 2.02. Causes of Action

(a) This chapter does not affect the right of any person to bring a common law cause of action against any individual whose consumption of an alcoholic beverage allegedly resulted in causing the person bringing the suit to suffer personal injury or property damage.

(b) Providing, selling, or serving an alcoholic beverage may be made the basis of a statutory cause of action under this chapter and may be made the basis of a revocation proceeding under Section 6.01(b) of this code upon proof that:

(1) at the time the provision occurred it was apparent to the provider that the individual being sold, served, or provided with an alcoholic beverage was obviously intoxicated to the extent that he presented a clear danger to himself and others; and

(2) the intoxication of the recipient of the alcoholic beverage was a proximate cause of the damages suffered.

Added by Acts 1987, 7th Leg., ch. 303, § 3, eff. June 11, 1987.